BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 95-862-C - ORDER NO. 1999-248

APRIL 7, 1999

IN RE: BellSouth Telecommunications, Inc. – Investigation of Level of Earnings.	)	ORDER DENYING PETITION FOR RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Reconsideration of Order No. 1999-135, our Order on Remand from the Supreme Court, filed by the Consumer Advocate for the State of South Carolina (the Consumer Advocate). Because of the reasoning stated below, the Petition must be denied.

First, the Consumer Advocate alleges that BellSouth Telecommunications, Inc. (BellSouth) was afforded a "second bite at the apple," in violation of the directives of the South Carolina Supreme Court, since the Commission allegedly relied on "new theories" presented by BellSouth at oral argument in order to justify affirming the previously found 12.75% rate of return on equity for the Company. The Supreme Court in Porter v. South Carolina Public Service Commission and BellSouth Telecommunications, Inc., 333 S.C. 12, 507 S.E. 2d 328 (1998) remanded the rate of return on common equity issue, *inter alia*, to the Commission with directions for us to reconsider this and other issues solely on the record on appeal in this case. The Court further reminded us that an administrative agency may not consider additional evidence upon remand unless the Court allows it because that affords a party "two bites at the apple."

Upon remand, we held oral arguments so that the parties could present to the Commission their theories on how we should rule on the remand, considering the record on appeal. The Consumer Advocate objected to the oral arguments on the grounds that they constituted an "additional proceeding." The objection was overruled, on the grounds that the arguments were merely an attempt by the Commission to receive advice on how it should rule on the remanded matters, based on the record on appeal. In the course of the oral arguments, counsel for BellSouth addressed Exhibit 23, located on page 691 of the record on appeal for this case. Said counsel performed an additional calculation on that Exhibit by determining arithmetic averages of the various columns. (See Exhibit 1, attached to this Order.) The original Exhibit in the record on appeal had everything shown on Exhibit 1, except for the arithmetic averages. The Consumer Advocate states that alteration of an original hearing exhibit constituted "additional evidence," and that the oral arguments constituted "additional proceedings," both in violation of the Supreme Court's opinion in this case. We certainly relied in part on one of the arithmetic averages obtained from the calculation shown on the page to support our affirmance of the 12.75% rate of return on equity.

First, we hold that no "additional evidence" was taken. We simply relied on a calculation based on an Exhibit already in the Record on Appeal. Second, no "additional proceedings" were held, since we only held oral arguments based on the record of the case. We did not hold a new evidentiary hearing. We did not hear from new witnesses. Therefore, we did not hold "additional proceedings," contrary to the position taken by the Consumer Advocate. (See Parker v. South Carolina Public Service Commission and

Duke Power Company, 288 S.C. 304, 342 S.E. 2d 403 (1986), wherein the Supreme Court held that an additional evidentiary proceeding where additional evidence was presented via a witness was improper on remand unless the Court had provided for the taking of additional evidence. This is unlike the present case where there was no additional evidentiary proceeding, no new evidence, and no new witness.)

The Consumer Advocate states that we may not rely on "a simple mathematical calculation" using the Record on Appeal, because we therefore run afoul of the Supreme Court's rulings in Piedmont Natural Gas Company v. Hamm , 301 S.C. 50, 389 S.E.2d 655 (1990) and Hamm v. South Carolina Public Service Commission and Piedmont Natural Gas Company, 295 S.C. 429, 368 S.E. 2d 911 (1988). These cases are not on point with the present case. In the Piedmont Gas cases, we adopted a "retention factor," which was applied to avoid overstating Piedmont's revenue in that Company's rate case. The Supreme Court held that we had no basis or derivation for that factor in the record, and the case was reversed and remanded back to us. On remand, we ordered the Company to remove the factor from consideration, an action which was later upheld.

The present case is differentiable from the Piedmont "retention factor" cases. In the present case, a mathematical calculation was done on an Exhibit in the record to obtain arithmetic averages. No single undefined "factor" appeared. Thus, the facts in the present case are different, and the Piedmont cases are simply not comparable.

Further, the Consumer Advocate states in a footnote that even our cited "simple mathematical calculation" contained errors. See Consumer Advocate Petition for Reconsideration at 3, fn 1. Such is not the case. If one averages all the numbers in the

DCF IBES column, one does indeed get 13.55%, our originally cited figure. The Consumer Advocate apparently got 13.47% by adding the two average figures in the column, and dividing by two. The reason that the Consumer Advocate's methodology is incorrect is that the two parts of the column are not "weighted" equally, in that they each have a different number of figures. Adding the two average figures and dividing by two simply does not give the correct average, because of the lack of weighting. The same thing goes for the DCF Zacks column. Averaging all of the figures in the column yields 13.87%, as stated on the modified Exhibit. Again, one gets the Consumer Advocate's 13.77% number if one simply, but incorrectly, adds the two average figures in that column on that Exhibit and divides by two.

Next, the Consumer Advocate states that the Commission may not consider "argument of counsel" as evidence, and that the averages on the modified exhibit are argument of counsel, and not evidence.

We certainly agree that the averages emanate from argument of counsel. However, we would point out that we asked for oral argument, based on the record of the case. The averages were derived from the Exhibit in the Record on Appeal. We believe that as long as the numbers are derived from the record, that there is no prohibition to using them, just because counsel happened to present argument on them. The principle that must be followed is to base our decision on the record of the case. This tenet was followed in the case at bar.

The Consumer Advocate further alleges in his Petition that the Supreme Court's opinion did not give the Commission the discretion to reaffirm our prior holding, and

then quotes a portion of the Supreme Court's opinion, which agrees with the proposition that the Commission's decision was not adequately documented in findings of fact or supported by substantial evidence. However, the Consumer Advocate fails to quote further relevant portions of the Supreme Court's opinion. The Court further stated: "We find the Order in this case deficient because PSC made no findings of fact or offered any explanation of its conclusion." 507 S.E. 2d at 332. Also, in its Conclusion, the Court noted: " We reverse the judgment of the circuit court on Issue 1 (rate of return on common equity),... We remand this case to PSC for it to reconsider those issues solely on the basis of the record on appeal in this case (emphasis added)."507 S.E. 2d at 338. We hold that this language allows us to reconsider the matter based on the record on appeal, and explain our conclusions. From what we can see, there is no Court prohibition of a reaffirmation of our prior holding, if we explain our conclusion, and that conclusion is supported by substantial evidence. We do not think that the reference to the Piedmont opinion is availing.

Also, the Consumer Advocate points to language in our Order No. 96-75 which indicated at that time that the Commission did not adopt Dr. Billingsley's rebuttal testimony as a basis for its final holding, but merely mentioned it as part of the evidence that had been submitted. For some reason, the Consumer Advocate takes this language as a complete prohibition against ever using Dr. Billingsley's rebuttal testimony as the basis for anything in another Order. This certainly should not be the case. In our prior Orders in this case, we took the position that as long as we adopted a rate of return within the range of the witnesses, that we were supporting our conclusion with the substantial evidence of

record. Dr. Billingsley's rebuttal testimony was simply one piece of testimony for us to consider at the time, which did happen to contain the rate of return that we ultimately found to be proper. Unfortunately, the Supreme Court then held that merely naming a figure in a range of figures was not sufficient, and that the exact number had to be supported by substantial evidence. Again, Billingsley's rebuttal testimony and, especially the numbers in his rebuttal exhibit, constitute substantial evidence to support this Commission's conclusion that 12.75% is the appropriate rate of return on equity in this case. We realize that the Consumer Advocate pointed out various alleged "problems" with Billingsley's rebuttal testimony, but we are "a jury of experts" with regard to such evidence, and we hold that this testimony and exhibit constitute reliable and probative evidence to support our conclusion. Our language in Order No. 96-75 does not constitute a prohibition from further use of Billingsley's testimony if appropriate, nor does it show arbitrary or capricious action on our part.

Lastly, the Consumer Advocate complains that we understated the dollar amount of the cash working capital from rate base when we removed $2,046,511, instead of $10,421,341. According to the Consumer Advocate, our adopted figure fails to set the cash working capital at zero, and therefore is contrary to the Supreme Court's decision in this case. As the Consumer Advocate correctly points out, our Order No. 95-1757 approved an addition to rate base of $10,421,341 for cash working capital. Again, however, in the Conclusion section of its opinion, the Supreme Court stated: "We reverse the judgment of the circuit court on....Issue 3 (allowance for cash working capital). We remand this case to PSC for it to reconsider those issues solely on the basis of the record

on appeal in this case." 507 S.E. 2d at 338. Upon remand, we have re-examined the discussion of the computation of cash working capital on page 588 of the Record on Appeal, as well as Accounting Exhibit A-3 on cash working capital on page 593. Upon reconsideration, we find that Staff's inclusion of adjustments related to unclaimed funds and unamortized debt refinancing costs were not properly classified when they were included in the cash working capital component of rate base. The adjustments related to unclaimed funds and unamortized debt refinancing costs were properly included in the rate base calculation however it is not proper to include them as a component of cash working capital. Reclassifying the pro forma adjustments related to unclaimed funds and unamortized debt refinancing costs reflects a cash working capital level of $2,046,511. Therefore, making an adjustment to remove $2,046,511 from cash working capital adjust this component of rate base to a zero balance.

We do take this opportunity to correct one scrivener's error. On the last line on page 9 of Order No. 1999-135, the last sentence fragment reads "More specifically, Billingsley estimates the DCF cost of . . . . (emphasis added)" The term "DCF" should have read "CAPM." We hereby correct the error.

The Consumer Advocate's Petition is denied. We believe that we properly followed the Supreme Court's ruling in this case as described above. Upon re-examination, Order No.1999-135 was proper.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)

Southern Bell Tel. & Tel. Co.
SC Docket 95-862-C
Billingsley Rebuttal Exhibit No. RSB-1

DCF and CAPM Cost of Equity Estimates: Bell Regional Holding Companies (RBHCs) and Selected Independent Telephone Companies

	DCF Results			CAPM Results*	
RBHCS	IBES	Zacks	BARRA Beta	IBES	Zacks
Ameritech	11.99%	11.78%	0.70	12.56%	12.77%
Bell Atlantic	12.60%	12.54%	0.70	12.56%	12.77%
BellSouth	12.18%	11.41%	0.71	12.64%	12.85%
NYNEX	11.80%	12.36%	0.64	12.09%	12.28%
Pacific Telesis	11.57%	12.15%	0.76	13.03%	13.26%
SBC Com.	13.45%	13.05%	0.76	13.03%	13.26%
US West	12.12%	12.25%	0.69	12.48%	12.69%
Average	12.24%	12.22%	0.72	12.63%	12.84%
Independents					
ALLTEL	15.23%	15.75%	0.86	13.82%	14.08%
Century Tel. Ent.	15.90%	14.69%	0.78	13.19%	13.42%
Cincinnati Bell	16.84%	19.68%	0.73	12.80%	13.02%
GTE Corp.	13.59%	13.55%	0.76	13.03%	13.26%
Lincoln Tel.	11.81%	15.43%	0.56	11.46%	11.63%
Frontier Corp.	17.72%	16.86%	0.70	12.56%	12.77%
Southern New England	11.63%	11.77%	0.58	11.62%	11.79%
Sprint, Inc.	14.78%	14.74%	0.93	14.37%	14.65%
Average	14.69%	15.31%	0.74	12.86%	13.08%
Average	13.55%	13.87%		12.75%	12.97%

*CAPM results are based on the same interest rate (7.06%), IBES- (14.92%) and Zacks-based (15.22%) expected returns on the S&P 500 as in the direct testimony of Randall S. Billingsley in this proceeding.